

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

JOHN D. CERQUEIRA,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

Civil Action No. 05-11652-WGY

**PLAINTIFF JOHN D. CERQUEIRA'S MOTION TO STRIKE  
DEFENDANT'S EXPERT DISCLOSURE SERVED OUT OF TIME**

Pursuant to Rule 37(c)(1) of the Federal Rules of Civil Procedure and Local Rules 1.3 and 37.1, plaintiff John D. Cerqueira moves the court for an order striking defendant American Airlines, Inc.'s (AA) disclosure of expert witness John Beardslee. As explained in the accompanying memorandum, Local Rules 16.5(c) and 26.4(a) provide that "the disclosure regarding experts required by Fed. R. Civ. P. 26(a)(2) shall be made at least 90 days before the final pretrial conference." The final pretrial conference is set for December 4, 2006. Thus, expert disclosures were due by September 5, 2006. AA did not serve its disclosure of Mr. Beardslee until October 2, 2006. Because AA's untimely disclosure is unjustified and will prejudice plaintiff, the court should not allow Mr. Beardslee to testify at trial.

Respectfully submitted,

**JOHN D. CERQUEIRA**

By his attorneys,

*/s/ Michael T. Kirkpatrick*

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Dated: October 4, 2006

#### **CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 4, 2006.

*/s/ Michael T. Kirkpatrick*

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Michael T. Kirkpatrick

#### **CERTIFICATE OF CONFERENCE**

I hereby certify that on October 4, 2006, at 10:45 am, I conferred by telephone with Amy Cashore Mariani, counsel for defendant, and attempted in good faith to resolve or narrow the issue presented in this motion, but the parties were unable to resolve the issue or narrow the areas of disagreement.

*/s/ Michael T. Kirkpatrick*

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Michael T. Kirkpatrick